

# The Commonwealth of Massachusetts

## State Ethics Commission

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### THE CONFLICT OF INTEREST LAW and CONSERVATION COMMISSIONERS

Conservation Commissioners are municipal employees covered by the conflict of interest law (Chapter 268A of the General Laws). All municipal employees, whether elected or appointed, full or part-time, paid or unpaid must abide by the restrictions of the conflict law.

The purpose of the conflict law is to ensure that your private financial interests and relationships do not conflict with your responsibilities on the Conservation Commission. The law is broadly written to prevent you from even becoming involved in a situation which could result in a conflict or give the appearance of a conflict.

If you have been designated as a "special," two sections of the conflict law -- Sections 17 and 20 -- apply less restrictively to you. (All other sections of the conflict law which affect municipal employees apply to special municipal employees in the same way.) Most Conservation Commissioners may be designated as "specials"; see the Commission's Fact Sheet, "Special Municipal Employees" for information on eligibility and the process of designation.

### CONFLICT QUESTIONS AND ANSWERS

#### Accepting Gifts (Section 3)

- Q:** The conservation commission was involved in a dispute between a developer and a local citizen's group over a parcel of land within flood plain boundaries. Your commission decided not to allow the developer to build on the land. To show its gratitude, the local citizens group offers each of the commissioners a gift certificate to a fine restaurant in Boston. May you accept?
- A:** It depends. You may not accept a gift of substantial value (\$50 or more), which is given to you because of the town position you hold, from someone or some group with whom you have official dealings -- even if the motivation for the gift is to express gratitude for a job well done or to foster goodwill. If your dinner is worth \$50 or more, you may not accept the gift certificate.

If the dinner is less than \$50 but is intended as a bribe, you, of course, may never accept a bribe no matter what its value. In addition, accepting such a gratuity may involve using your official position to secure an unwarranted privilege of

substantial value in violation of Section 23 of the law (see below). With respect to such unwarranted privileges, a town or individual board is free to adopt stricter standards than those in the conflict law such as an outright ban on accepting gratuities, no matter what the value.

### **Prohibited Actions Affecting Financial Interests (Section 19)**

- Q:** You are a professional engineer. You work as site engineer for a development company presently building condominiums in town. May you, as commissioner, deliberate and vote on a notice of intent from the company you work for?
- A:** No. You may not participate in any matter that affects the financial interest of your employer. You also may not act on a matter that affects your own financial interest or those of your "immediate" family member or of a business for which you serve as officer, director, partner or trustee. Immediate family is defined in the law as you and your spouse and both of your children, parents, brothers and sisters. For example, if your sister is an abutter to a parcel of land in a flood plain (whether or not she challenges the right of a development company to build on the land), you should abstain when the issue comes before your commission. Your sister, as abutter, has a financial interest in the matter.

### **Restrictions After Hours (Section 17)**

- Q:** To follow the previous example -- You are a professional engineer working for a development company. May you represent the development company before the zoning board of appeals on a special permit concerning property located in wetlands?
- A:** If you are a regular municipal employee, no. You may not act as the agent or attorney for a private party before town boards. Representing a private company before a town board is acting as that company's agent; it doesn't matter whether you are paid or not.

If you are a "special" municipal employee, it depends. You may represent private parties before other town boards (not your own) unless it is a matter in which you officially participated or which is now or within the past year was within your official responsibility as conservation commissioner. In this example, the proposed development would come before the conservation commission, therefore, you could not represent the development company before the ZBA, whether or not you are designated as a special. To emphasize, it is not enough simply to abstain from official action on your own board -- if the same matter is before other town boards you must also be careful not to act as the representative for a private company before those boards.

### **Prohibited Financial Interest in Municipal Contracts & Multiple Jobs** (Section 20)

- Q:** You want to serve as elected planning board member. If elected, may you hold both positions on the planning board and conservation commission? (This question assumes you are unpaid as a conservation commissioner.)
- A:** It depends. If the planning board position is unpaid, yes. You can hold multiple unpaid appointed or elected positions with the same town and not be in conflict. If the planning board position is paid, you must be designated a special municipal employee in your conservation commission position to comply with the conflict law. "Specials" may hold multiple paid positions if they meet certain criteria. Talk to your municipal lawyer or call the Ethics Commission on this one: (617) 727-0060.

### **Misuse of Official Position** (Section 23)

- Q:** Your cousin, a lawyer, is representing a client in an appeal of your commission's decision. May you participate, as a commissioner, in the matter?
- A:** Yes, provided that you publicly disclose your private relationship with your cousin in writing to your appointing authority (whatever board or person appointed you to the commission) prior to taking any action. This disclosure must be kept available for public inspection. The disclosure will dispel, by law, the impression of favoritism created when you act on matters affecting relatives or friends. In addition, you must be careful to act objectively and not attempt to obtain any unwarranted benefits for your cousin because of your relationship. Using your position to secure unwarranted privileges for people always violates the law, regardless of whether you disclosed your private relationship.

See, Commission Fact Sheet, "Avoiding Appearances of Conflicts of Interests" for more detailed information.

### **Restrictions After You Leave Government Service** (Section 18)

- Q:** You have resigned as a member of the commission and now work for a developer who has a project pending before the city. May you represent the developer before various city boards and agencies?
- A:** It depends.
1. You may not represent the developer before a city agency if the particular matter at hand is something in which you participated as a conservation commissioner.

2. For one year after you leave the commission, you may not appear before city boards on a matter if it was before your commission within two years before you left (and you did not personally participate in the matter).
3. You may represent the developer before city agencies (including your own) with no "cooling off" period, on a matter you never dealt with and which was not before your commission while you were a member of the commission.

### LEGAL ADVICE

This summary presents a brief overview of the conflict law and suggests activities which you, as a Conservation Commissioner, must avoid. It is not a comprehensive review intended to cover every situation. You should consult your municipal lawyer or call the Ethics Commission's Legal Division at 727-0060 for particular advice on the conflict law.

If you have a question about your own activities, we urge you to request an opinion from your city or town counsel or directly from the Commission prior to engaging in the activity in question.

If you have questions about others' activities in your county, urge them to use the opinion process. In addition, complaints may be filed with our Enforcement Division in person, by phone (at the same number listed above) or by letter. The identity of complainants is kept confidential.

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Commission Fact Sheets are prepared and issued by the Public Education Division of the State Ethics Commission. They are intended to provide guidance to public officials and employees concerning practical applications of the conflict law.

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